

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

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LAWRENCE JAMES SACCATO )  
Plaintiff )  
vs. )  
 )  
DANIEL N. GORDON P.C. ) Case No. 10-6111-HO  
Defendant ) Trial By Jury Demanded  
FIA Card Services, N.A. )  
Co-Defendant )

**MOTION IN OPPOSITION TO SUMMARY JUDGMENT and**  
**MOTION IN OPPOSITION TO DISMISS**

10 Comes now the Plaintiff Lawrence James Saccato and hereby submits his opposition to the  
11 Defendant Daniel N. Gordon P.C.'s Motion to Dismiss. The Plaintiff brings this action against  
12 the Defendant as a result of Defendant, Daniel N. Gordon P.C., violation(s) of the Fair Debt  
13 Collection Practices Act (FDCPA) 15 U.S.C. § 1692-1692p. and the Co-Defendant FIA Card  
14 Services a.k.a. Bank of America, for violation(s) of the(FCRA) Credit Reporting Act 15 USC  
15 §1681, *et seq.*

17 This case is not about any alleged monies, alleged monies owed, or alleged accounts, or judgments  
18 but rather what Defendant Daniel N. Gordon & FIA Card Services did or did not do when  
19 challenged under FDCPA and the FCRA. These laws are geared directly at the provider of  
20 information to credit reporting agencies and debt collection practices compliance. It is what they  
21 are suppose to do when challenged in credit reporting and debt collection not about accounts owed  
22 or claimed to be owed.

24 The issues in this complaint are not of any alleged debt but the methods used by Defendant  
25 Daniel N. Gordon P.C. violations of FDCPA 15 U.S.C. §§1692-1692p. Specifically, Plaintiff has

26 incurred damages by virtue of Defendant having used harassment, oppression and abuse in the  
 27 unfair and unconscionable methods conducted with regard to and in conjunction with that  
 28 specified in FDCPA 15 U.S.C. §1692 § 802:

29

30 **Congressional findings and declaration of purpose**

31 **(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection**  
 32 **practices by many debt collectors. Abusive debt collection practices contribute to the**  
 33 **number of personal bankruptcies, to marital instability, to the loss of jobs, and to**  
 34 **invasions of individual privacy;**

35

36 and also in conjunction with FDCPA 15 U.S.C §§1692(e) *A debt collector may not use any false,*  
 37 *deceptive, or misleading representation or means in connection with the collection of any debt.*  
 38 The Plaintiff has incurred much personal, and financial damages as a result of Defendant Daniel  
 39 N. Gordon P.C. actions, pursuant to their violations of FDCPA 15 U.S.C. § 1692(d)(e)(f)(g); and in  
 40 their continued and unconscionable activities against Plaintiff. The Defendant Daniel N. Gordon  
 41 P.C. has failed to adequately and competently validate any alleged debt, and continued collection  
 42 activities.

43

44 It is ludicrous to believe and simply assume that "what the 'debt collector' says is allegedly owed  
 45 is absolutely to be taken as what is being owed," The Consumer has the right to demand strict  
 46 proof of any alleged claim that is being demanded from them. How is one to know if there are any  
 47 mistakes, omissions, error in claim, or especially what exactly the claim entails, without being  
 48 provided with the particulars regarding that claim? See *Spears v. Brennan*, Issue Four.

49 ***Spears v. Brennan, Indiana Court of Appeals, March 26,2001, Issue Four:*** "Finally, we address  
 50 Spears' claim that Brennan violated 15 U.S.C. § 1692g(b) when he failed to cease collection of the  
 51 debt after receiving Spears' written notification, within the thirty-day debt validation period,  
 52 that Spears was disputing the debt 15 U.S.C. § 1692g(b) reads: If the consumer notifies the debt  
 53 collector in writing within the thirty-day period described in subsection (a) of this section that  
 54 the debt, or any portion thereof, is disputed, or that the consumer requests the name and  
 55 address of the original creditor, the debt collector shall cease collection of the debt, or any  
 56 disputed portion thereof, until the debt collector obtains verification of the debt or a copy of  
 57 a judgment, or the name and address of the original creditor, and a copy of such verification  
 58 or judgment, or name and address of the original creditor, is mailed to the consumer by the  
 59 debt collector.

60 **I5 U.S.C. § 1692g(b) (emphasis added).** On November 12, 1996, nineteen days after the date  
 61 of Brennan's debt collection letter, Spears' counsel Shepard sent Brennan a letter declaring  
 62 that Spears "disputes your debt collection-related allegations, denies the same, and demands  
 63 strict proof and verification thereof." Record at 21. As such, Brennan should have ceased

64 his debt collection efforts immediately upon receiving that letter. Instead, Brennan  
 65 proceeded to obtain a default judgment against Spears on the debt collection claim before he  
 66 had mailed Spears the necessary verification and, thus, violated 15 U.S.C. § 1692g(b),  
 67 Brennan maintains, however, that there was no violation of the FDCPA because he  
 68 "sent adequate verification of the debt [to Spears] in the October 30, 1996 notice  
 69 of claim"

70 Brief of Appellee at 13. Specifically, Brennan claims that a copy of the consumer credit  
 71 contract between Spears and American General attached to the notice of claim provided  
 72 sufficient verification of the debt within the meaning of 15 U.S.C. § 1692g(b).

73 We cannot agree.

74 The contract in no way provides sufficient verification of the debt. A review of the document  
 75 reveals that it identifies only the terms of Spears' loan, including a 17.99% annual interest rate and  
 76 the original loan amount of \$2,561.59. The loan agreement contains no accounting of any  
 77 payments made by Spears, the dates on which those payments were made, the interest which had  
accrued or any late fees which had been assessed once Spears stopped making the required  
 78 payments. Indeed, the existing unpaid contract balance at the time Brennan sent the debt collection  
 79 notice was at least \$350.00 more than the original loan amount. Therefore, Brennan violated 15  
 80 U.S.C. § 1692g(b) when he failed to cease collection of the debt by obtaining a default  
 81 judgment against Spears after Spears had notified Brennan in writing that he was  
 82 disputing the debt but before Brennan had mailed verification of the debt to Spears.  
 83 See footnote. We reverse the trial court's entry of summary judgment in favor of Brennan on this  
 84 issue."

85 15 U.S.C. §§ 1692g(a) and 1692l, 15 U.S.C. § 1692g(b) is in the nature of a statutory tort which is  
 86 completed once the debt collector fails to cease his debt collection efforts after receiving written  
 87 notification that a debtor is disputing the debt but before mailing verification of the debt to the  
 88 debtor. See *Blakemore*, 895 F. Supp at 984. As discussed previously, an FDCPA claim "has  
 89 nothing to do with whether the underlying debt is valid. An FDCPA claim concerns the method of  
 90 collecting the debt. It does not arise out of the transaction creating the debt[]." *Azar*, 874 F. Supp.  
 91 at 1318. Footnote: See 15 U.S.C. § 1692k (governing civil liability under the Act).

92

93  
 94 The case before this Honorable Court is in regard to a 3<sup>rd</sup> party, hearsay alleged account and, as  
 95 outlined above in *Spears v. Brennan*, Issue Four, requires itemization.

96

97 The Indiana Court of Appeals opined that a "full ledger accounting" is proof of an alleged debt.

98 None of the claims and allegations of the Defendant Daniel N. Gordon P.C., which were challenged by  
 99 the Plaintiff's letter dated February 23, 2010, were ever competently validated by the Defendant.

100

101 Again the Plaintiff states this case is not about any alleged monies or alleged accounts but rather  
 102 what Defendant Daniel N. Gordon P.C. did or did not do when challenged under FDCPA.  
 103 Plaintiff asks Defendant Daniel N. Gordon P.C., Where is the term "money" in the FDCPA?  
 104 There exists, in the FDCPA, the word "debt collector," because any consumer, such as this  
 105 Plaintiff, has the right to challenge the "debt collector." Also, the words "debt collector" and "is  
 106 obligated to" or "must" appear together quite often throughout FDCPA.

107

108 The Defendant Daniel N. Gordon P.C. admitted receipt of a validation of debt request and failed to  
 109 properly validate the debt. Defendant Daniel N. Gordon attempted to provide a copy of a statement  
 110 that was clearly erroneous and did not even have the same account number for which the action  
 111 was brought against Plaintiff, claiming the erroneous statement was all that was required for a  
 112 response under FDCPA. See exhibits PE 101 thru 107. The response clearly shows that the  
 113 Defendant Daniel N. Gordon submitted inaccurate and erroneous information and further shows  
 114 that the Co-Defendant FIA Card Services does not have the systems in place to prevent providing  
 115 inaccurate and erroneous information.

116

117 The Co-defendant, FIA Card Services , is wholly owned by NB Holding Corporation, which is  
 118 wholly owned by Bank of America Corporation is a creditor and furnisher of information to the  
 119 national credit reporting agencies within the meaning of Fair Credit Reporting Act 15 USC §1681, *et seq.*

120

121 **FCRA § 623. Responsibilities of furnishers of information to consumer reporting agencies**  
 122 [15 U.S.C. § 1681s-2]

123 (a) Duty of furnishers of information to provide accurate information.

124 The Co-Defendant FIA Card Services have never produced evidence of their statements. The  
 125 Plaintiff has not received any of the requested documents. The documents have not been  
 126 produced as evidence in this case and the Plaintiff has had no opportunity to object to their  
 127 authenticity or accuracy.

128 The Plaintiff has not given permission to anyone to share the Plaintiffs personal information such  
 129 as account numbers, social security numbers, bank account records, etc. Of course if these were  
 130 obtained during discovery the Plaintiff would have had an opportunity to object to these

131 documents and a motion could have been made to the court to compel by the Defendant as  
 132 applicable. The Plaintiff sees this information being provided to this court without due  
 133 process/discovery as a violation of the Plaintiffs personal information and a violation of UCC  
 134 Title 42 invasion of privacy which is a felony under this Title, U.C.C. - ARTICLE 9 - SECURED  
 135 TRANSACTIONS specifically 15 U.S.C. § 6802 : US Code - Section 6802: Obligations with  
 136 respect to disclosures of personal information.

137

**138 Opposition to Defendants motion for Summary Judgment:**

139 To defeat Defendants motion for summary judgment, Plaintiff need not present any direct  
 140 evidence of conscious or reckless disregard. Rather, he must merely present evidence from  
 141 which the trier of fact could deduce such disregard. *Cushman v. Trans Union Corp.*, 920 F. Supp.  
 142 80, 84 (E.D. Pa. 1996) ("It is not necessary for the plaintiff to produce a 'smoking gun' or other  
 143 form of definite proof.") *aff'd* 115 F.3d 220 (3rd Cir. 1997). "Instead, where intent has not been  
 144 explicitly expressed, the trier of fact may deduce it from the surrounding circumstances."<sup>30</sup> *Ibid.*  
 145 The "surrounding circumstances" may include a defendant's awareness of the problems and  
 146 failure to take any corrective action, both of which are present here. *See, e.g., Coughlin v.*  
 147 *Tailhook Assn.*, 112 F.3d 1052, 1057 (9th Cir. 1997) (hotel's knowledge of prior convention-  
 148 related assaults and its failure to take adequate steps to prevent such occurrences supported jury's  
 149 finding of "conscious disregard"); *Larez v. City of Los Angeles*, 946 F.2d 630, 646-47, 649 (9th  
 150 Cir. 1991) (affirming award of punitive damages based on police chief's "recklessness or callous  
 151 indifference" to prior complaints concerning inadequate procedures); *Ingram v. Acands, Inc.*, 977  
 152 F.2d 1332, 1342 (9<sup>th</sup> Cir. 1992) (knowledge of health risks of asbestos and failure to provide  
 153 warning constituted "wanton disregard" entitling plaintiff to punitive damages).

154 "When willfulness is an issue, summary judgment should be granted with caution, since  
 155 questions such as intent or motive are presented." *Simpson v. United States*, 652 F.2d 831, 834  
 156 (9th Cir. 1981) ("Whether the efforts of [defendant] were so feeble as to rise to the level of  
 157 willfulness is a material issue of fact which should have prevented summary judgment and which  
 158 now warrants reversal."). *See also Miller*, 945 F.2d at 1467. In numerous FCRA cases, courts  
 159 have consistently denied defendant's motion for summary judgment on punitive damages.  
 160 *Wiggins*, 848 F. Supp. at 219 ("this Court cannot say that the record shows willfulness, or the  
 161 absence of willfulness, as a matter of law. Rather, the Court believes that it should be left to the  
 162 jury to resolve the disputed facts and decide whether those facts demonstrate a willful failure to  
 163 follow reasonable procedures.") (Citing *Collins v. Retail Credit Co.*, 410 F. Supp. 924, 931-32  
 164 (E.D. Mich. 1976)).

165 2. Defendant claims there is no private right of action under 15 U.S.C. § 1681s-2(a), which  
 166 governs the duty of furnishers. The Plaintiff will clarify the law from the FCRA,

**167 § 602. Congressional findings and statement of purpose [15 U.S.C. § 1681]**

168 (a) *Accuracy and fairness of credit reporting.* The Congress makes the following findings:  
 169 (1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate  
 170 credit reports directly impair the efficiency of the banking system, and unfair credit  
 171 reporting methods undermine the public confidence which is essential to the  
 172 continued functioning of the banking system.

**173 § 603. Definitions; rules of construction [15 U.S.C. § 1681a]**

174 (a) Definitions and rules of construction set forth in this section are applicable for the  
 175 purposes of this title.

176

177 (b) The term "person" means any individual, partnership, corporation, trust, estate,  
178 cooperative, association, government or governmental subdivision or agency, or other  
179 entity.

180 (c) The term "consumer" means an individual.

181

182 **617. Civil liability for negligent noncompliance [15 U.S.C. § 1681o]**

183 (a) *In general.* Any person who is negligent in failing to comply with any requirement  
184 imposed under this title with respect to any consumer is liable to that consumer in an  
185 amount equal to the sum of

186 (1) any actual damages sustained by the consumer as a result of the failure; and

187 (2) in the case of any successful action to enforce any liability under this section, the  
188 costs of the action together with reasonable attorney's fees as determined by the court.

189 (b) *Attorney's fees.* On a finding by the court that an unsuccessful pleading, motion, or other  
190 paper filed in connection with an action under this section was filed in bad faith or for  
191 purposes of harassment, the court shall award to the prevailing party attorney's fees  
192 reasonable in relation to the work expended in responding to the pleading, motion, or  
193 other paper.

194 **§ 623. Responsibilities of furnishers of information to consumer reporting agencies**

195 [15 U.S.C. § 1681s-2]

196 (a) Duty of Furnishers of Information to Provide Accurate Information

197 (1) Prohibition

198 (A) *Reporting information with actual knowledge of errors.* A person shall not  
199 furnish any information relating to a consumer to any consumer reporting

200 agency if the person knows or has reasonable cause to believe that the information is inaccurate.

201 (B) *Reporting information after notice and confirmation of errors.* A person shall

202 not furnish information relating to a consumer to any consumer reporting agency if

203 (i) the person has been notified by the consumer, at the address specified by

204 the person for such notices, that specific information is inaccurate; and

205 (ii) the information is, in fact, inaccurate.

206 (C) *No address requirement.* A person who clearly and conspicuously specifies to

207 the consumer an address for notices referred to in subparagraph (B) shall not

208 be subject to subparagraph (A); however, nothing in subparagraph (B) shall

209 require a person to specify such an address.

210 (D) *Definition.* For purposes of subparagraph (A), the term “reasonable cause to

211 believe that the information is inaccurate” means having specific knowledge, other than solely

212 allegations by the consumer, that would cause a reasonable person to have substantial doubts

213 about the accuracy of the information.

214 (2) *Duty to correct and update information.* A person who

215 (A) regularly and in the ordinary course of business furnishes information to one or more

216 consumer reporting agencies about the person's transactions or experiences with any consumer;

217 and

218 (B) has furnished to a consumer reporting agency information that the person determines is not

219 complete or accurate, shall promptly notify the consumer reporting agency of that determination

220 and provide to the agency any corrections to that information, or any additional information, that

221 is necessary to make the information provided by the person to the agency complete and

222 accurate, and shall not thereafter furnish to the agency any of the information that remains not  
 223 complete or accurate.

224 (3) *Duty to provide notice of dispute.* If the completeness or accuracy of any information  
 225 furnished by any person to any consumer reporting agency is disputed to such person by a  
 226 consumer, the person may not furnish the information to any consumer reporting agency without  
 227 notice that such information is disputed by the consumer.

228 **Case Law to Support private right of action under 15 U.S.C. § 1681s-2(a),**

229 Dornhecker ro. Ameritech Corp., 99 F. Supp. 2d 918 (N.D. Ill. 2000).

230 A U.S. district court held that the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq.,  
 231 permits consumers to bring private causes of action against furnishers of information to credit  
 232 reporting agencies who fail to properly investigate disputed credit information.

233 Here, a telephone services provider opened phone service accounts on behalf of third persons  
 234 who fraudulently used the names of other individuals. The provider subsequently enlisted the  
 235 services of collection agencies to satisfy the debts on the accounts. After being made aware of  
 236 the debts, the individuals whose names had been used notified the credit reporting agencies of  
 237 the fraud. After the individuals, collection agencies, and credit reporting agencies notified the  
 238 provider of the dispute, the provider reportedly failed to investigate. The individuals sued the  
 239 provider, alleging, among other claims, that defendant violated 1681s-2(b)(1) of the FCRA by  
 240 failing to properly investigate the disputed credit information. **Defendant moved to dismiss,**  
**arguing that Plaintiffs lacked standing because the FCRA does not create a private right of**  
**action for consumers.**

243

244

245 Denying the motion, the court agreed with the U.S. Supreme Court's analysis-set forth in Cort  
 246 v. Ash, 95 S. Ct. 2080 (1975) for determining whether an implied private right of action exists  
 247 under a statute. The four factors are: whether (1) the plaintiff is a member of a class for whose  
 248 benefit the statute was enacted; (2) the legislative history indicates congressional intent, explicit  
 249 or implicit, either to create or deny such a remedy; (3) implying a private remedy would frustrate  
 250 the underlying purposes of the legislative scheme; and (4) the cause of action is one traditionally  
 251 relegated to state law.

252 **May it please the Court:** the Plaintiff has disputed with the Creditor FIA/BofA and The Credit  
 253 Reporting Agencies in the same time period and has attached to this Motion of these mailings via  
 254 US Mail with Notary Certification of mailing to both the Co-Defendant and the credit bureaus.  
 255 The question is that during the investigation did the Co-Defendant “talk” to the Bureaus and vice  
 256 versa how does anyone know without proof? Did the Defendant receive accurate information  
 257 from the Co-Defendant with proof other than their statement? Why did the Co-Defendant not  
 258 provide this alleged investigation information to the Plaintiff after they had done their alleged  
 259 investigation? Most likely if they had it may have prevented this suit.

260 Also the alleged account claims to be an FIA Card services account however FIA does not  
 261 appear in the Plaintiffs credit report, however the alleged account is identified as a Bank of  
 262 America account in the report.

263 **FCRA PROVIDES PRIVATE CAUSE OF ACTION AGAINST FURNISHER OF  
 264 INFORMATION**

265 Gordon v. Greenpoint Credit, 266 F.Supp.2d 1007 (S.D.Iowa2003).

266  
**267 IN THE UNITED STATES DISTRICT COURT**  
**268 FOR THE EASTERN DISTRICT OF PENNSYLVANIA**  
**269 RICHARD L. SHEFFER, :**  
**270 Plaintiff, : CIVIL ACTION**

271  
 272 v. :  
 273

274 **EXPERIAN INFORMATION :**  
 275 **SOLUTIONS, INC., et al., : No. 02-7407**  
 276 **Defendants. :**  
**277 MEMORANDUM AND ORDER**  
**278 SCHILLER, J. February , 2003**

279 In its motion, Sears contends that Plaintiff's claim under the FCRA should be dismissed  
 280 because consumers have no private right of action against a credit furnisher under 15 U.S.C. §  
 281 1681s-2(b). In the alternative, Sears argues that Mr. Sheffer's allegations are legally insufficient  
 282 because Plaintiff has failed to allege that a credit reporting agency has sent a dispute verification  
 283 form to Sears. Sears also moves for the dismissal of Mr. Sheffer's defamation claim, arguing that  
 284 the claim is preempted by the FCRA. With respect to the issue of whether § 1681s-2(b) creates a  
 285 cause of action for a consumer against a furnisher of credit information, Sears correctly notes  
 286 that courts have reached different conclusions.

287 However, a clear majority of courts that have addressed this issue has "effectively  
 288 recognized Congress' obvious intent [to] create a private cause of action through § 1681s-2."  
 289 *Vazquez-Garcia v. Trans Union De P.R., Inc.*, 222 F. Supp. 2d 150, 155 (D.P.R. 2002); *see also*  
 290 *Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1058 (9th Cir. 2002) (describing  
 291 purpose  
 292 of § 1681s-2(b) as "provid[ing] some private remedy to injured consumers"). The reasoning in  
 293 support of the majority view has been aptly summarized:

294 The civil liability sections, 15 U.S.C. § 1681n and 1681o, explicitly provide a private right of  
 295 action for consumers wishing to enforce any provision of the Fair Credit Reporting Act against  
 296 “any person” who either “willfully fails to comply” or is “negligent in failing to comply.” Absent  
 297 any explicit limitation, the plain language of 15 U.S.C. §§ 1681n, 1681o, 1681s-2(b) and (c)  
 298 provide a private right of action for a consumer against furnishers of information who have  
 299 willfully or negligently failed to perform their duties upon notice of a dispute. Furthermore, the  
 300 negative inference of explicitly precluding a consumer’s right of action for violations of §  
 301 1681s-2(a) is that they are preserved in § 1681s-2(b). Accordingly, the plain language of the Fair  
 302 Credit Reporting Act compels the conclusion that there is a private right of action for consumers  
 303 to enforce the investigation and reporting duties imposed on furnishers of information.

304

305 **Defendant Daniel N. Gordon P.C., states that the Plaintiff Fails to State a Claim upon  
 306 which relief can be granted:**

307 In considering a motion to dismiss for failure to state a claim upon which relief can be granted,  
 308 courts must accept as true all of the factual allegations pleaded in the complaint and draw all  
 309 reasonable inferences in favor of the non-moving party. *See Bd. of Trs. of Bricklayers & Allied*  
 310 *Craftsmen Local 6 of N.J. Welfare Fund v. Wetlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir.  
 311 2001).

312 Furthermore, a motion to dismiss will only be granted if it is clear that relief cannot be granted to  
 313 the Plaintiff under any set of facts that could be proven consistent with the complaint’s  
 314 allegations. *See Hishon v. King & Spalding*, 467U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355  
 315 U.S. 41, 45-46 (1957); *Erickson*, 127 S.Ct. at 2200.

316

317

318        In *Erickson*.....the Supreme Court stressed the *pro se* status of the plaintiff in *Erickson*  
 319 — a far cry from the highly sophisticated antitrust counsel in *Bell Atlantic*: The Court of  
 320 Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more  
 321 pronounced in this particular case because petitioner has been proceeding, from the litigation's  
 322 outset, without counsel. A document filed pro se is " to be liberally construed," *Estelle [v.*  
 323 *Gamble]*, 429 U.S. [97] at 106, 97 S.Ct. 285, and " a pro se complaint, however in-artfully  
 324 pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *ibid.*  
 325 (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) (".. All pleadings shall be so  
 326 construed as to do substantial justice" ).

327        **And**

328        Federal Rule of Civil Procedure 8(a)(2) requires only " a short and plain statement of the claim  
 329 showing that the pleader is entitled to relief." Specific facts are not necessary; the statement need  
 330 only "give the defendant fair notice of what the ... claim is and the grounds upon which it  
 331 rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. ----, ----, 127 S.Ct. 1955, --- L.Ed.2d ----, ---- -  
 332 ---- (2007) (slip op., at 7- 8) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d  
 333 80 (1957)).

334        In addition, when ruling on a Defendant's motion to dismiss, a judge must accept as true  
 335 all of the factual allegations contained in the complaint. *Bell Atlantic Corp.*, *supra*, at 1955, 127  
 336 S.Ct. 1955 (slip op., at 8-9) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n. 1, 122  
 337 S.Ct. 992, 152 L.Ed.2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104  
 338 L.Ed.2d 338 (1989); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90  
 339 (1974)); *Erickson*, 127 S.Ct. at 2200.

340

341        **Summary Judgment:**

342

343        "Summary judgment is appropriate if the evidence read in the light most favorable to the

344 nonmoving party, demonstrates that there is no genuine issue of material fact, and that the  
 345 moving party is entitled to judgment as a matter of law." *Bullock v. Gomez*, 929 F. Supp. 1299,  
 346 1301-1302 (C.D. Cal. 1996), *citing* Fed.R.Civ.P. 56(c). In reviewing the evidence tendered in  
 347 support of and in opposition to the motion, "the evidence of the non-movant is to be believed,  
 348 and all justifiable inferences are to be drawn in the non-movant's favor." *Id.* at 1302 *See also*  
 349 *Rebel Oil Co., Inc. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1435 (9th Cir. 1995) (any and all  
 350 inferences that a jury could reasonably draw in favor of the non-moving party must be so drawn  
 351 by the Court).

352 For purposes of the instant motion, once plaintiff tenders sufficient evidence from which the  
 353 jury *could* infer liability, it is for the jury to resolve the factual disputes and ultimately to "judge  
 354 the adequacy of consumer reporting agency procedures." *Bryant*, 689 F.2d at 78 ("Each case  
 355 under[15 U.S.C. § 1681e(b)] will vary on the facts, and each must be judged on its own merits"  
 356 using a reasonableness standard.). *See also, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249,  
 357 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) ( "at the summary judgment stage the judge's function  
 358 is not himself to weigh the evidence and determine the truth of the matter" ). Thus, TRW can  
 359 only prevail on its motion for summary judgment by negating all possibilities that a reasonable  
 360 jury could infer that it failed to comply with the FCRA provision at issue. *Ibid.* (in order to  
 361 prevail on summary judgment, the moving party must "foreclose the possibility of the existence  
 362 of certain facts from which 'it would be open to a jury . . . to infer from the circumstances' that [a  
 363 violation had occurred].").

364

365 **Summation:**

366

367 The Plaintiff has disputed with the Furnisher/Co-Defendant and the Credit Bureaus in the same  
368 time frame, certification of mailings are attached. The OCC, Federal Reserve Board, FDIC, OTS,  
369 NCUA, and the FTC (Agencies) issued a joint final rule (Final Rule) under Section 312 of the  
370 Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amends the Fair Credit  
371 Reporting Act (FCRA). Section 623 of the FCRA describes the responsibilities of persons that  
372 furnish information about consumers (furnishers) to credit reporting agencies (CRAs). The Final  
373 Rule addresses the accuracy and integrity of reported information and furnishers' responsibility  
374 to reinvestigate disputes based on direct disputes from consumers. Furnishers are also required to  
375 establish policies and procedures to implement the requirements.

376 **The Final Rule will become effective on July 1, 2010.**

377

378 The Plaintiff moves this honorable court to Dismiss Motion To Dismiss and Summary Judgment  
379 and set these proceedings to Rule 26f.

380

381 Dated this 19<sup>th</sup> of July, 2010

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383

Respectfully Submitted,

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390

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February 23, 2010

DANIEL N GORDON, P.C.

PO BXO 22338

EUGENE, OR 97402

Re: Acct #4264 2939 4916 3590

Dear Collector:

Be advised that this is not a refusal to pay, but a notice sent pursuant to the Fair Debt Collection Practices Act, 15 USC 1692g that your claim is disputed and validation is requested.

This is not a request for "verification" or proof of my mailing address, but a request for VALIDATIN made pursuant to the above named Title and Section. I respectfully request that your offices provide me with competent evidence that I have any legal obligation to pay you.

Please provide me with the following: a simple accounting of the debt, the name and address of the original creditor, and the original account number. Also, please show me that you are licensed to collect in my state and provide me with your license numbers and your Registered Agent.

Your anticipated cooperation in this regard is greatly appreciated.

Best Regards,

LARRY SACCATO

**Daniel N. Gordon, P.C.**

Attorneys and Counselors at Law  
Serving the Pacific Northwest

4023 W 1<sup>st</sup> Avenue  
P.O Box 22338  
Eugene, OR 97402  
Phone 541-342-2276  
Toll Free 800-311-8566

**Larry J Saccato**  
Po Box 143  
Glide Or 97443-0143

September 10, 2009

**Daniel N. Gordon**

Licensed in Oregon, Washington, and Idaho

**Matthew R. Aylworth**

Licensed in Oregon, Washington, and Idaho

**Lindsay K. Westmann**

Licensed in Oregon and Washington

Dear Larry J Saccato:

This firm has been retained with the authority to file a lawsuit against you for a debt owed by you to FIA CARD SERVICES, LLC. Demand is hereby made upon you for payment in the sum of \$24207.37.

Unless you notify this office within thirty days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within thirty days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within thirty days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

At this time, no attorney has personally reviewed the particular circumstances of your account. However, if you fail to contact this office, your account will be reviewed by an attorney to determine whether to exercise the authority given to this firm to sue you.

This communication is from a debt collector. This is an attempt to collect a debt, and any information obtained will be used for that purpose.

**DANIEL N. GORDON, P.C.**

**Larry J Saccato**  
Po Box 143  
Glide Or 97443-0143

**Creditor**  
FIA CARD SERVICES,  
N.A.

**Account Number**

4264293997810852

**Reference Number**

6011200753

**Total Amount Due: \$24207.37**

**Total Amount Enclosed: \_\_\_\_\_**

We will gladly accept your payment by Visa, MasterCard or Discover.

<b>CARD NUMBER</b>	<b>3 DIGIT CODE FROM BACK OF CARD</b>
<b>SIGNATURE</b>	<b>EXPIRATION DATE</b>
<b>PRINTED NAME</b>	I AUTHORIZE THE CREDIT CARD PAYMENT FOR THE AMOUNT SHOWN BELOW
	<b>PAYMENT AMOUNT</b>
	\$

Mail Payments To:

**Daniel N. Gordon P.C.**  
P.O. Box 22338  
Eugene, OR 97402

To make a payment online visit [www.dgordonpc.com](http://www.dgordonpc.com).

*PL Ex*

*3.*

1 MR. AYLWORTH: If I may, I'm going to object to the  
2 fact that I'm a fact witness, and then I'm going to answer,  
3 just so that you understand. This is a representation, and FIA  
4 Card Services maintains the debt.

5 MR. SACCATO: Okay. Very well. And has this  
6 account been assigned to your firm?

7 MR. AYLWORTH: No. Same answer, same question.

8 MR. SACCATO: Thank you. And I think it's going to  
9 be answered with that document right there, but did you or your  
10 firm receive a validation of debt request for this account?

11 MR. AYLWORTH: Yes.

12 MR. SACCATO: Okay. And I believe it's a -- were  
13 you going to enter that as an exhibit or not?

14 MR. AYLWORTH: If you have no objection, I'll offer  
15 it.

16 MR. SACCATO: Well, yeah, I would like a copy of  
17 it.

18 MR. AYLWORTH: You can have this very copy  
19 (handing).

20 MR. SACCATO: Okay. Thank you.

21 MR. AYLWORTH: And because of that, I would like to  
22 offer Plaintiff's Exhibit 3.

23 (Plaintiff's Exhibit 3 offered.)

24 THE ARBITRATOR: Any objection to 3?

25 MR. SACCATO: Is that that?

1 THE ARBITRATOR: Yes.

2 MR. SACCATO: Yeah. No problem. No problem.

3 MR. AYLWORTH: And I --

4 THE ARBITRATOR: It will be received.

5 (Plaintiff's Exhibit 3 received.)

6 MR. SACCATO: You can have the copy --

7 MR. AYLWORTH: And, actually, I do have only one  
8 copy today with me.

9 MR. SACCATO: Well, he can take it and then maybe  
10 he can just mail a copy down.

11 THE ARBITRATOR: Or you can take it and you can  
12 make copies and --

13 MR. SACCATO: Or we can make a copy, whatever. Or,  
14 yeah, I can make a copy and send it up to you.

15 And then on the validation of debt request, the one  
16 dated February 23rd, did you respond to that?

17 MR. AYLWORTH: I am not aware of whether or not any  
18 response was made to that. Can we call it Defendant's 104 and  
19 offer it?

20 MR. SACCATO: Sure.

21 (Document marked for identification as  
22 Defendant's Exhibit 104.)

23 (Defendant's Exhibit 104 offered.)

24 THE ARBITRATOR: Which is that now?

25 MR. AYLWORTH: That's the --

1 MR. SACCATO: That's the one that I -- oh, go  
2 ahead.

3 MR. AYLWORTH: Just for clarification sake, it is  
4 the February 23rd letter --

5 THE ARBITRATOR: Which is the request?

6 MR. AYLWORTH: -- which we call a validation  
7 request. Yes.

8 (Defendant's Exhibit 104 received.)

9 MR. SACCATO: And you're unaware whether they  
10 responded?

11 MR. AYLWORTH: That's right. I don't know. I  
12 would guess that we did not because of the timing.

13 MR. SACCATO: Okay. And we've already asked a  
14 couple of these, so I won't reask them. I mean, he admitted  
15 that he has no additional statements of -- Mr. Tyler -- I'm  
16 sorry, Mr. Pyle admitted that he didn't think there was any  
17 additional statements past this date.

18 THE ARBITRATOR: No, no, no. My memory is that he  
19 testified that there were statements up to the June or July  
20 date when the account was closed --

21 MR. SACCATO: Oh, okay. Then could I --

22 THE ARBITRATOR: -- but that he didn't send those  
23 statements to counsel.

24 MR. SACCATO: Oh, okay. And do you have any idea  
25 why he didn't send those statements?

1 MR. AYLWORTH: I don't know.

2 MR. SACCATO: When you asked him for statements,  
3 did he determine what ones to send you regarding this account,  
4 why he like didn't go back to '07 or '06 or anything, or --

5 MR. AYLWORTH: I have no indication as to why, but  
6 we do order evidence from our clients and present whatever is  
7 offered.

8 MR. SACCATO: And it's up to them to provide you  
9 with the evidence they choose?

10 MR. AYLWORTH: That's correct, because we can't  
11 produce any.

12 MR. SACCATO: Right, but you can ask. But I'm just  
13 asking a general question. When you ask, you just rely upon  
14 what they send you. You don't --

15 MR. AYLWORTH: That's correct.

16 MR. SACCATO: -- say, I would like all of the  
17 statements from --

18 MR. AYLWORTH: I can ask for anything, but I'm  
19 bound by the evidence produced.

20 MR. SACCATO: Okay. And that's all they produced  
21 to you. They didn't produce any other statements?

22 MR. AYLWORTH: You have what I have. Yes.

23 MR. SACCATO: Okay. Thank you.

24 And when the validation of debt request was sent,  
25 did you or anybody in your firm obtain a verification of the

1 alleged debt?

2 MR. AYLWORTH: That depends on what you think  
3 verification means.

4 MR. SACCATO: That being an accounting, all of the  
5 credits and debits.

6 MR. AYLWORTH: The statements are sufficient  
7 validation of debt under the Fair Debt Collection Practices  
8 Act.

9 MR. SACCATO: All right. And there was no previous  
10 judgment on this account that you're aware of?

11 MR. AYLWORTH: There has been no judgment entered  
12 on this account.

13 MR. SACCATO: Okay.

14 MR. AYLWORTH: Because we would be estopped from  
15 suing you on this account if there was.

16 MR. SACCATO: Okay. And after receiving the  
17 validation did you receive -- did you happen to receive a  
18 dispute in this debt?

19 MR. AYLWORTH: That's what Defendant's 104 is.

20 MR. SACCATO: Oh, that's the dispute?

21 MR. AYLWORTH: Yes.

22 MR. SACCATO: All right.

23 MR. AYLWORTH: Is it not? I mean, you're the  
24 disputer.

25 MR. SACCATO: Well, what I'm asking -- that, I

# AFFIDAVIT OF NOTARY PRESENTMENT

State of OREGON )  
                    )  
                    ) ss.  
County of DOUGLAS )

## CERTIFICATION OF MAILING

On this 19th day of February, 2010, for the purpose of verification, I, the undersigned Notary Public, being commissioned in the County and State noted above, do certify that Lawrence James Saccato appeared before me with the following documents listed below. I, the undersigned notary, personally verified that a document described as a Letter of Dispute was placed in an envelope and sealed by me. They were sent by United States Post Office First Class Mail to the following:

	Pages
Bank of America P.O. Box 17054 Wilmington, DE 19850	1

Valynn Currie, Notary Public  
P.O. Box 3097  
Winston, Oregon 97496

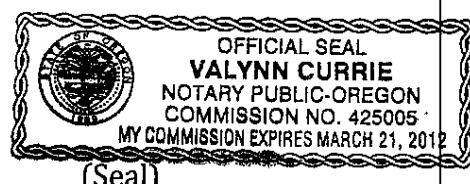
WITNESS my hand and official seal.

Val Lynn Currie  
NOTARY PUBLIC

DATE

2/19/10

My commission expires: 3/21, 2012



(Seal)

February 19, 2010

USPS First Class Mail

Larry Saccato  
P.O. Box 143  
Glide Oregon 97443

Bank of America  
P.O. Box 17054  
Wilmington, DE 19850

Social [REDACTED]

Sirs:

This is a letter of dispute.

I recently pulled my credit report and found that Bank of America (BofA) is reporting derogatory information in my account. #4264-2939-4916-3590.

I do not recall ever having this account and dispute this.

Sincerely

*LARRY SACCATO*

Larry Saccato

# AFFIDAVIT OF NOTARY PRESENTMENT

State of OREGON                          )  
    ) ss.  
County of DOUGLAS                      )

## CERTIFICATION OF MAILING

On this 19th day of February, 2010, for the purpose of verification, I, the undersigned Notary Public, being commissioned in the County and State noted above, do certify that Lawrence James Saccato appeared before me with the following documents listed below. I, the undersigned notary, personally verified that these document(s), Letters of Dispute were placed one each in an envelope and sealed by me. They were sent by United States Post Office First Class Mail to the following:

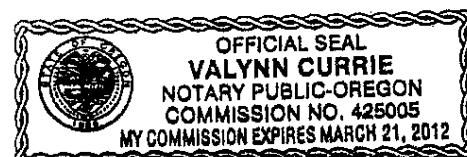
	Pages
Transunion P.O. Box 2000 Chester, PA 19022	1
Equifax P.O. Box 740241 Atlanta, GA 30374	1
Experian P.O. Box 9701 Allen, Texas 75013	1

Valynn Currie, Notary Public  
P.O. Box 3097  
Winston, Oregon 97496

WITNESS my hand and official seal.

Valyn Currie  
NOTARY PUBLIC

2/19/10  
DATE



My commission expires: 3/21, 2012

USPS First Class Mail

February 19, 2010

Lawrence James Saccato  
P.O. Box 143  
Glide Oregon 97443

Experian  
P.O. Box 9701  
Allen, Texas 75013

Social # [REDACTED]

Dear Sirs:

This is a letter of dispute.

I recently pulled my credit report and found Bank of America reporting derogatory information in my account.

I do not recall ever having this account and dispute this.

Signed

*Lawrence Saccato*

Lawrence Saccato

USPS First Class Mail

February 19, 2010

Lawrence James Saccato  
P.O. Box 143  
Glide Oregon 97443

TransUnion Consumer Solutions  
P.O. Box 2000  
Chester, PA 19022-2000

Social # [REDACTED]

Dear Sirs:

This is a letter of dispute.

I recently pulled my credit report and found that BofA is reporting derogatory information in my account.

I do not recall ever having this account and dispute this.

Signed

LAWRENCE SACCATO

Lawrence Saccato

USPS First Class Mail

February 19, 2010

Lawrence James Saccato  
P.O. Box 143  
Glide Oregon 97443

Equifax  
P.O. Box 740241  
Atlanta, GA 30374

Social # [REDACTED]

Dear Sirs:

This is a letter of dispute.

I recently pulled my credit report and found that Bank of America is reporting derogatory information in my account.

I do not recall ever having this account and dispute this.

Signed

*LAWRENCE SACCATO*

Lawrence Saccato

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Motion in Opposition to Summary Judgement and Motion in Opposition to Dismiss Case # 10-6111-HO with Plaintiff Exhibits (PE) 101 thru 107 and Affidavit of Notary Presentment to Bank of America and Affidavit of Notary Presentment to Equifax, Experian and Transunion were sent by United States Post Office First Class Mail to:

Clerk of the Court  
Wayne L. Morse  
United States Courthouse  
405 East Eighth Avenue  
Eugene, Oregon 97401

David A Jacobs  
LUVASS COBB  
777 High Street, Ste 300  
Eugene, Oregon 97401

Arusi R. Loprinzi  
111 SW Fifth Avenue, Suite 1775  
Portland, Oregon 97204

They were deposited in the United States Post Office in Winston Oregon on July 19th 2010.

*Lawrence Saccato*  
Lawrence James Saccato, Plaintiff  
c/o 6387 Old Highway 99 S  
Roseburg, Oregon 97471  
541-784-2284 mess.  
ljsaccato@gmail.com